

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRUDY K. LEAPALDT,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

8:13-CV-32

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's motion for attorney fees (filing 20) pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. Leapaldt has requested an award of fees in the amount of \$4,282.37, which represents 21.8 hours of work at \$186.95 per hour and 1.1 hours of work at \$188.13 an hour.¹ Leapaldt has also requested an award of costs of \$350 for the filing fee. The defendant has no objection to the amount of fees or costs requested. Filing 21.

The Court has determined that the plaintiff was the prevailing party in this action, as this case was remanded to the Commissioner for further action. The Court further finds that the position of the Commissioner was not substantially justified, for the reasons set forth in the Court's previous Memorandum and Order (filing 18). See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Finally, the Court finds that the motion for fees was filed in a timely fashion,² and that the fees requested are reasonable. Therefore, the plaintiff is entitled to an award of attorney fees and costs in the amounts requested.

¹ The maximum hourly fee of \$125 specified in 28 U.S.C. § 2412(d)(1)(D)(2)(A) was adjusted to account for inflation. Leapaldt has presented uncontested evidence that a cost-of-living increase is warranted (filing 20-1). See, § 2412(d)(2)(A)(ii); *Johnson v. Sullivan*, 919 F.2d 503, 505 (8th Cir. 1990).

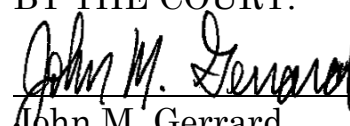
² An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of 42 U.S.C. § 405(g) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See *Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); see also, *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).

THEREFORE, IT IS ORDERED:

1. The plaintiff's motion for attorney fees (filing 20) is granted.
2. By separate document, the Court shall enter judgment for plaintiff and against defendant providing that plaintiff is awarded attorney fees of \$4,282.37 and costs of \$350.

Dated this 9th day of May, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge